



August 6, 2001

Ms. Betsy Elam  
Taylor, Olson, Adkins, Sralla & Elam, L.L.P.  
6000 Western Place, Suite 200  
I-30 at Bryant-Irvin Road  
Fort Worth, Texas 76107-4654

OR2001-3407

Dear Ms. Elam:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 150311.

The City of Haltom City Police Department (the "department"), which you represent, received a request for information regarding incidents on specific dates involving a named individual. You identify the responsive information as being three department offense reports, which you have submitted for our review. You claim this information, or portions thereof, is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that the offense reports at issue relate to pending criminal prosecution. Based upon this representation, we conclude that the release of the offense reports at this time would interfere with the prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not protect from disclosure information normally found on the front page of an offense report. Gov't Code § 552.108(c); *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ*

*ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, a governmental body generally must release front page offense report information, including the complainant's identity, even if this information is not actually located on the front page of the offense report. *See* Open Records Decision No. 127 at 4 (1976) (summarizing type of front page offense report information). However, this case concerns allegations of sexual assault and attempted sexual assault. Thus, we next address your claim of confidentiality as it pertains to a sexual assault victim's right to privacy.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 also encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In Open Records Decision No. 339 (1982), we concluded that a sexual assault victim has a common law privacy interest which prevents disclosure of information that would identify the victim. *See also* Open Records Decision Nos. 393 (1983). Thus, the department must withhold from disclosure all information that identifies the victim in each report. However, a review of the information request shows that the requestor, an attorney, evidently claims a special right of access to the information pursuant to section 552.023 of the Government Code. *See* Gov't Code § 552.023(a) (granting special right of access to information protected by laws intended to protect person's privacy to person's authorized representative). Thus, if the requestor is the victim's authorized representative, the victim-identifying information must be released to the requestor pursuant to section 552.023(a).

In summary, other than front page offense report information, the department may withhold the submitted reports under section 552.108(a)(1) of the Government Code. If the requestor is the authorized representative of the alleged sexual assault victim, the department must release the victim-identifying information. Otherwise, the department must withhold all victim-identifying information under section 552.101 of the Government Code in conjunction with the common law right to privacy.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

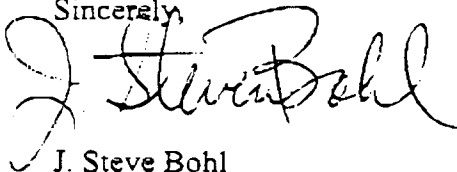
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Steve Bohl". The signature is fluid and cursive, with the first name "J." and last name "Bohl" clearly distinguishable.

J. Steve Bohl  
Assistant Attorney General  
Open Records Division

JSB/er

Ref: ID# 150311

Enc: Submitted documents

c: Mr. Leo Patrick Ferris  
Attorney at Law  
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(w/o enclosures)